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UNITED STATES DISTRICT COURT
DISTRICT OF NEBRASKA

ANDREW BOEHM, individually, and on behalf
of all others similarly situated,

Plaintiff,

v.

PREMIERE GUARDIAN PROTECTION, LLC,
a Kansas limited liability company, D/B/A
Safelife 365 (“Safelife”) and John Doe, an
unknown business entity,

Defendants.

Case No.: 8:20-cv-00____

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

1. Plaintiff ANDREW BOEHM (“Plaintiff”) brings this Class Action Complaint and Demand for Jury Trial against PREMIERE GUARDIAN PROTECTION, LLC, a Kansas limited liability company, D/B/A Safelife 365 (“Safelife”) and John Doe, an unknown business entity, to stop their illegal practice of making unauthorized calls that play prerecorded voice messages to the telephones of consumers nationwide, and to obtain redress for all persons injured by their conduct. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorney.

NATURE OF THE ACTION

2. Safelife sells medical alert devices. As a primary part of their marketing efforts, Safelife hired John Doe to place thousands of calls employing an artificial or prerecorded voice message to consumers' phones nationwide.

3. Unfortunately, Defendants did not obtain consent prior to placing these calls and, therefore, are in violation of the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227.

4. Congress enacted the TCPA in 1991 to restrict the use of sophisticated telemarketing equipment that could target millions of consumers *en masse*. Congress found that these calls were not only a nuisance and an invasion of privacy to consumers specifically but were also a threat to interstate commerce generally. *See* S. Rep. No. 102-178, at 2-3 (1991), as reprinted in 1991 U.S.C.C.A.N. 1968, 1969-71.

5. The TCPA targets unauthorized calls exactly like the ones alleged in this case, based on Defendants' use of technological equipment to spam consumers with its advertising on a grand scale.

6. By placing the calls at issue, Defendants have violated the privacy and statutory rights of Plaintiff and the Class.

7. Plaintiff therefore seeks an injunction requiring Defendants to stop their unconsented calling, as well as an award of actual and statutory fines to the Class members, together with costs and reasonable attorneys' fees.

PARTIES

8. Plaintiff ANDREW BOEHM is a natural person and is a citizen of the District of Nebraska.

9. Defendant PREMIERE GUARDIAN PROTECTION, LLC, (Defendant "Premiere") is a limited liability company organized and existing under the laws of the State of Kansas with its principal place of business at 10316 Shawnee Mission Pkwy, SHAWNEE, KS 66203. The registered agent for

1 Premiere according to the Kansas Secretary of State Website is James M. Harrington, 10404 Shawnee
2 Mission Pkwy, Shawnee Kansas 66203.

3 10. Defendant John Doe is an unknown business entity.

4 **JURISDICTION AND VENUE**

5 11. This Court has federal subject matter jurisdiction under 28 U.S.C. § 1331, as the action
6 arises under the Telephone Consumer Protection Act, 47 U.S.C. § 227, which is a federal statute.

7 12. This Court has personal jurisdiction over Defendants because they purposefully directed
8 their phone calls to Plaintiff in this District and in the State of Nebraska and because the dispute directly
9 arose from those phone calls placed into this District.

10 13. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because the wrongful
11 conduct giving rise to this case substantially occurred in this District.

12 **COMMON FACTUAL ALLEGATIONS**

13 14. Defendant Safelife sells medical alert devices.

14 15. Defendant Safelife hired Defendant John Doe to make robocalls promoting Safelife's
15 products.

16 16. To increase their sales and avoid paying for legitimate forms of advertising, John Doe
17 called and sent artificial and prerecorded voice messages to thousands of residential and cellular
18 telephones at a time.

19 17. When the Class members answered their cell phones expecting to hear from a real person,
20 Defendants pulled a bait and switch by playing an artificial or prerecorded voice message.

21 18. Unfortunately, Defendants failed to obtain consent from Plaintiff and the Class before
22 bombarding their cell phones with these illegal voice recordings.

23 **FACTS SPECIFIC TO PLAINTIFF**

24 19. On November 21, 2019, Plaintiff received a call on Plaintiff's cell phone ending in 9888.

1 20. The Caller ID displayed the phone number (402) 227-8701.

2 21. The Caller ID appeared to display a fake or “spoofed” phone number because upon
3 information and belief, Defendants have no presence in the (402) physical location in Nebraska.

4 22. When Plaintiff answered the call, Plaintiff heard an artificial prerecorded voice message
5 advertising medical devices.

6 23. When Plaintiff responded to the automated prompts, Plaintiff was connected with Safelife
7 and/or their agents.

8 24. Plaintiff received a charge on his credit card from “Safe Life 365” for \$39.90.

9 25. Plaintiff received a product in the mail from Safelife365, 10316 Shawnee Mission Pkway,
10 Shawnee KS 66203.

11 26. Plaintiff never consented to receive calls from Defendants. Plaintiff had no relationship
12 with Defendants and has never requested that Defendants contact him in any manner.

13 27. Defendants’ calls violated Plaintiff’s statutory rights.

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16 **CLASS ALLEGATIONS**

17 28. **Class Definition:** Plaintiff brings this action pursuant to Federal Rule of Civil Procedure
18 23(b)(2), and 23(b)(3) on behalf of Plaintiff and a class defined as follows:

19 **TCPA Class.** All persons in the United States who: (1) from the last 4 years to
20 present (2) received at least one telephone call; (3) on his or her cellular or
21 residential telephone; (4) that was played an artificial or prerecorded voice
22 message; (5) for the purpose of promoting Defendants’ products

23 29. The following people are excluded from the Class: (1) any Judge or Magistrate presiding
24 over this action and members of their families; (2) Defendants, Defendants’ subsidiaries, parents,
25 successors, predecessors, and any entity in which the Defendants or their parents have a controlling
26 interest and its current or former employees, officers and directors; (3) persons who properly execute and
27 file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been
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1 finally adjudicated on the merits or otherwise released; (5) Plaintiff's counsel and Defendants' counsel;
2 and (6) the legal representatives, successors, and assigns of any such excluded persons.

3 30. **Numerosity:** The exact number of the Class members is unknown and not available to
4 Plaintiff, but it is clear that individual joinder is impracticable. On information and belief, Defendants
5 placed telephone calls to thousands of consumers who fall into the definition of the Class. Members of
6 the Class can be identified through Defendants' records.

7
8 31. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class, in
9 that Plaintiff and the Class members sustained damages arising out of Defendants' uniform wrongful
10 conduct and unsolicited telephone calls.

11 32. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the
12 interests of the other members of the Class. Plaintiff's claims are made in a representative capacity on
13 behalf of the other members of the Class. Plaintiff has no interests antagonistic to the interests of the
14 other members of the proposed Class and is subject to no unique defenses. Plaintiff has retained
15 competent counsel to prosecute the case on behalf of Plaintiff and the proposed Class. Plaintiff and his
16 counsel are committed to vigorously prosecuting this action on behalf of the members of the Class and
17 have the financial resources to do so.

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19 33. **Policies Generally Applicable to the Class:** This class action is appropriate for
20 certification because Defendants have acted or refused to act on grounds generally applicable to the Class
21 as a whole, thereby requiring the Court's imposition of uniform relief to ensure compatible standards of
22 conduct toward the Class members and making final injunctive relief appropriate with respect to the Class
23 as a whole. Defendants practices challenged herein apply to and affect the Class members uniformly, and
24 Plaintiff's challenge of those practices hinge on Defendants' conduct with respect to the Class as a whole,
25 not on facts or law applicable only to Plaintiff.
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1 34. **Commonality and Predominance:** There are many questions of law and fact common to
2 the claims of Plaintiff and the Class, and those questions predominate over any questions that may affect
3 individual members of the Class. Common questions for the Class include, but are not necessarily limited
4 to the following:

5 i. Whether Defendants' conduct violated the TCPA;

6 ii. Whether Defendants called and played its voice recordings to thousands of cell
7 phones;

8 iii. Whether Defendants obtained prior written consent prior to contacting any
9 members of the Class;

10 iv. Whether members of the Class are entitled to treble damages based on the
11 knowingness or willfulness of Defendants' conduct.
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13 35. **Superiority:** This case is also appropriate for class certification because class proceedings
14 are superior to all other available methods for the fair and efficient adjudication of this controversy as
15 joinder of all parties is impracticable. The damages suffered by the individual members of the Class will
16 likely be relatively small, especially given the burden and expense of individual prosecution of the
17 complex litigation necessitated by Defendants' actions. Thus, it would be virtually impossible for the
18 individual members of the Class to obtain effective relief from Defendants' misconduct. Even if members
19 of the Class could sustain such individual litigation, it would still not be preferable to a class action,
20 because individual litigation would increase the delay and expense to all parties due to the complex legal
21 and factual controversies presented in this Complaint. By contrast, a class action presents far fewer
22 management difficulties and provides the benefits of single adjudication, economy of scale, and
23 comprehensive supervision by a single Court. Economies of time, effort and expense will be fostered,
24 and uniformity of decisions ensured.
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CAUSE OF ACTION
Violation of 47 U.S.C. § 227
(On behalf of Plaintiff and the Class)

36. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

37. Defendants and/or their agent placed telephone calls to Plaintiff's and the Class members' cellular telephones without having their prior express written consent to do so.

38. Defendants' calls were made for a commercial purpose.

39. Defendants played artificial or prerecorded voice message to the cellular and residential phones of Plaintiff and the Class members as proscribed by 47 U.S.C. § 227(b)(1)(A)(iii) and (B).

40. As a result of its unlawful conduct, Defendants repeatedly invaded Plaintiff's and the Class's personal privacy, causing them to suffer damages and, under 47 U.S.C. § 227(b)(3)(B), entitling them to recover \$500 in civil fines for each violation and an injunction requiring Defendants to stop their illegal calling campaign.

41. Defendants and/or its agent made the violating calls "*willfully*" and/or "*knowingly*" under 47 U.S.C. § 227(b)(3)(C).

42. If the court finds that Defendants *willfully* and/or *knowingly* violated this subsection, the court may increase the civil fine from \$500 to \$1500 per violation under 47 U.S.C. § 227(b)(3)(C).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff ANDREW BOEHM, individually and on behalf of the Class, prays for the following relief:

A. An order certifying the Class as defined above, appointing Plaintiff ANDREW BOEHM as the Class representative and appointing his counsel as Class Counsel;

B. An order declaring that Defendants' actions, as set out above, violate the TCPA;

- 1 C. An order declaring that Defendants' actions, as set out above, violate the TCPA *willfully*
2 *and knowingly*;
- 3 D. An injunction requiring Defendants to cease all unlawful calls without first obtaining the
4 call recipients' prior express written consent to receive such calls, and otherwise
5 protecting interests of the Class;
- 6 E. An injunction requiring Defendants to cease all recording without first obtaining the call
7 recipients' consent, and otherwise protecting interests of the Class;
- 8 F. An award of actual damages and/or statutory fines and penalties;
- 9 G. An award of reasonable attorneys' fees and costs; and
- 10 H. Such other and further relief that the Court deems reasonable and just.
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13 **JURY DEMAND**

14 Plaintiff requests a trial by jury of all claims that can be so tried.

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16 Dated: January 18, 2021

17 Respectfully submitted,

18 ANDREW BOEHM, individually and on
19 behalf of all others similarly situated,

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21 By: /s/ Mark L. Javitch.

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